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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/076,499	02/19/2002	David Higgs	5478-8A.1	2448

7590 10/04/2004

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EXAMINER	
SAYALA, CHHAYA D	

ART UNIT	PAPER NUMBER
1761	

DATE MAILED: 10/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/076,499	HIGGS ET AL.	
	Examiner	Art Unit	
	C. SAYALA	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *1* MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-41* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☐ Claim(s) _____ is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☒ Claim(s) *1-41* are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *19 February 2002* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

Applicant's election with traverse of Group I, claims 1-3, 7-14 in Paper filed 8/17/2004 is acknowledged. The traversal is on the ground(s) that 1) the search for one group would necessarily include a search for the other groups, 2) compact prosecution would be promoted if the claims were all searched together and 3) multiple patent applications for the same invention does not promote public interest. This is not found persuasive because a protein is not an oil and a fertilizer is not a food product. They are classified separately and require separate searches. The traversal is not persuasive of error; it is based on applicant's opinions.

The requirement is still deemed proper and is therefore made FINAL.

Specification

The disclosure is objected to because of the following informalities: Page 1, line 5 of the specification should be corrected as to the correct status of the parent case, 09/566728, "which is now abandoned".

Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

1. Claim 3 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The preamble states "protein concentrates" lacks antecedent basis.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by EP 1074605.

The patent abstract teaches all the steps claimed in claim 1 for rapeseed.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. Claims 1-3, 7-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP 1074605 or Sakai et al. (US Patents 4946598 and 6517885) in

view of EP 0925723, Kozlowska et al. (US Patent 4148789) and Bedford (US Patent 2851357).

EP '605 is as discussed above. Sakai et al. ('598) teach heating the mustard seed (col. 1, lines 55+), cracking and compressing to obtain the oil and simultaneously, it would have been obvious that protein meals are obtained. Although the patent does not teach de-hulling the '885 patent to the same inventor and to the same inventive concept teaches dehulling before de-oiling by pressing. It would have been obvious to incorporate such a step in the '598 patent. None of the above patents teaches adding animal offal, does not teach cooking the mixture, or solvent extraction (claim 7), or an antioxidant.

EP '723 teaches a protein-containing feedstuff, wherein the material that contains the vegetable protein is subjected to heat-treatment. The vegetable protein material is also subjected to dehulling (see page 4). At claim 30, the addition of an antioxidant is disclosed. Claim 31 teaches a mixture of vegetable lipids as well as "other animal products". Page 6 teaches cooking the protein and separating the solids from the liquids with a centrifuge/press. The protein is dried to a moisture content of 12% or less, preferably 5-10% (see lines 1-15). '789 teaches extraction of oil from rape seeds. Note in col. 1, the patentees teach at lines 60-65, solvent extraction. Also see col. 2, line 19.

Cols. 3 and 4 in the Bedford patent teaches in Examples 5-8, the addition of soybean to fish offals and cooking the mixture, and separating the stickwater and oil. Note the ratios of soybean oil to fish.

Thus it appears that each and every limitation was known in prior art for its intended use, and it would have been obvious to incorporate such steps for their benefits, into the inventions shown by the primary references '605, '598 and '885' all patents being drawn to the same feedstuff.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. SAYALA whose telephone number is 571-272-1405.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

C. SAYALA
Primary Examiner
Group 1700.